1382.

SUPREME COURT OF THE UNITED STATES.

No. 137.

THE UNITED STATES, APPTS.,

vs.

ELI K. PRICE, EXECUTOR OF JOSEPH ARCHER.

APPEAL FROM THE CIRCUIT COURT U. S. FOR EAST PENNSYLVANIA.

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J. & G. S. Gideon, printers.

Pleas before the honorable the judges of the circuit court of the United States in and for the eastern district of Pennsylvania, in the third circuit, at Philadelphia, of October sessions, 1843, No. 3. It is thus contained:

The United States of America bring their bill against Eli K. Price, executor of Joseph Archer, deceased, late of the district aforesaid, a citizen of Pennsylvania, and Charles Bispham, a citizen of the State of New Jersey; and thereupon, Henry M. Watts, attorney of the said United States for the district aforesaid, and on their behalf, informeth and complains:

That a certain James L. Mifflin, and the said Joseph Archer, in his lifetime, together with a certain William Foster, in his lifetime, duly sealed and delivered to the said United States their bond in writing, dated twenty-eighth day of April, A. D. 1828, whereby they and each of them bound themselves, their heirs, executors, and administrators, jointly and severally, to pay to the United States aforesaid the sum of fifty thousand dollars. Conditioned, that they, or either of them, or either of their heirs, executors, or administrators, should, on or before the twenty-eighth day of April, A. D. 1829, well and truly pay the sum of four thousand one hundred eighty-eight dollars sixty-two cents, as by the said bond, to which the said plaintiff craves leave to refer when produced, will appear.

That the said sum of four thousand one hundred eighty-eight dollars and sixty-two cents, at the time in the condition of the said bond mentioned, was not paid to the said United States; and thereupon the said United States commenced an action at law, in the district court of the United States in and for the district aforesaid, against the said James L. Mifflin, Joseph Archer, and William Foster, as of May sessions, 1829, No. 348; and on the eighteenth day of May, of the same year, obtained a judgment in their favor against the said defendants, for the sum of four thousand one hundred eighty-eight dollars and sixty-two cents, with interest from the time the said bond became due, together with the further sum of twenty-two dollars and sixty cents, the costs of said suit.

And the said plaintiff further sheweth, that the said James L. Mifflin, and the said Joseph Archer, in his lifetime, together with the said Wm. Foster, in his lifetime, duly sealed and delivered their certain other bond, dated the first day of May, A. D. 1828, whereby they and each of them bound themselves, as aforesaid, to pay, as aforesaid, the further sum of fifty thousand dollars; conditioned that they, or either of them, or either of their heirs, executors, or administrators, should, on or before the 1st day of May, A. D. 1829, well and truly pay to the said United States the sum of one thousand nine hundred and fifty-five dollars, as by the said bond, to which the said plaintiff craves leave to

refer when produced, will appear. That the said sum of one thousand nine hundred and fifty-five dollars, at the time in the condition of the said bond mentioned, was not paid to the said United States; and thereupon the said United States commenced an action at law in the district court aforesaid, against the said defendants, as of May session, 1829, No. 360; and on the eighteenth day of May, of the same year, obtained a judgment in their favor against said defendants for the sum of one thousand nine hundred and fifty-five dollars, with interest from the time the said bond became due, together with the sum of twenty-two dollars and sixty cents, the cost of said suit.

And the said plaintiff further sheweth, that the said James L. Mifflin and the said Joseph Archer, in his lifetime, together with the said William Foster, in his lifetime, duly sealed and delivered their certain other bond, dated the twelfth day of April, A. D. 1828, whereby they and each of them bound themselves, as aforesaid, to pay, as aforesaid, the further sum of fifty thousand dollars; conditioned, that they or either of them, or either of their heirs, executors, or administrators, should, on or before the twelfth day of October, A. D. 1829, well and truly pay the further sum of two thousand two hundred and ninety-seven dollars, as by the said bond, to which the said plaintiff craves leave to refer when produced, will appear. That the said sum of two thousand two hundred and ninety-seven dollars, at the time in the condition of the said bond mentioned, was not paid to the said United States; and thereupon the said United States commenced an action at law in the court aforesaid, against the said defendants, as of November session, 1829, No. 19; and on the 18th day of November, of the same year, obtained a judgment in their favor against the said defendants for the sum of two thousand two hundred and ninety-seven dollars, with interest from the time the said bond became due, together with the sum of twenty dollars and twenty cents, the costs of said suit.

And the said plaintiff doth further show, that the said defendants have not paid, nor hath either of them, their heirs, executors, or administrators, paid, to the said plaintiff, the principal sums with the arrears of interest and costs of the said several bonds and judgments aforesaid, or any part thereof, as they and each of them were jointly and severally bound to do; and that the said several sums of money, as aforesaid, remain wholly due and unpaid to the said plaintiff as aforesaid.

And the said plaintiff doth further shew unto your honors, that the said James L. Mifflin, at the time and long before the death of the said Joseph Archer, was utterly insolvent and unable to pay and discharge his debts; and that the said James L. Mifflin was actually discharged, under the acts of Assembly of Pennsylvania, passed for the relief of insolvent debtors, as an insolvent debtor, before the death of the said Joseph Archer. And the said plaintiff doth further shew, that, since the death of the said Joseph Archer, to wit, on day of , A. D. 184 , the said James L. Mifflin was discharged under the act of Congress entitled "An act to establish a uniform system of bankruptcy throughout the United States."

And the said plaintiff doth further shew, that the said Joseph Archer, in his lifetime, to wit, on or about the 22d day of January, A. D. 1833, by a certain instrument in writing filed with the Secretary of the Treasury of the United States, and for the considerations therein stated, did assent that the privileges of a certain act of Congress, entitled "An act for the relief of certain insolvent debtors of the United States," should be extended to the said William Foster, without prejudice to his, the said Joseph Archer's, liability to the said United States for the amounts of the said several bonds and judgments as aforesaid, as by the said instrument in writing, to which the said plaintiff craves leave to refer when produced, will appear.

And the said plaintiff doth further show, that the said William Foster departed this life in the year of our Lord one thousand eight hundred and forty, utterly insolvent and unable to pay and discharge his debts, and long before the death of the said Joseph Archer.

And the said plaintiff doth further shew unto your honors, that the said Joseph Archer was, in his lifetime and at the time of his decease, seized in fee simple of, or well entitled to, certain freehold messuages, lands, and tenements, and possessed of, or well entitled to, a very considerable personal estate, consisting of household furniture, bonds, mortgages, and other securities for the payment of money, and of divers other effects, to a considerable amount or value in the whole; and, being so seized and possessed of, or entitled to, such real estate and effects, and being of a sound and disposing mind, made and published his last will and testament, in writing, in the manner required by law, and duly nominated and appointed a certain Charles Taylor, of the city of Philadelphia, and the before named Charles Bispham, of New Jersey, his executors and trustees, with a proviso, that, if either of the said Charles Taylor or Charles Bispham should die or renounce the said appointment, then the aforesaid Eli K. Price should be an executor and trustee under the said will, in place of either of the said persons so dying or renouncing. That the said Joseph Archer departed this life on or about the 24th day of September, A. D. 1841, without revoking or altering his will as aforesaid.

That upon the death of the said Joseph Archer, the said Charles Taylor by an instrument in writing, dated the first day of October, A. D. 1841, and filed in the proper office, renounced his executorship and trusteeship as aforesaid, and the said Eli K. Price and Charles Bispham, the will and testament of the said Joseph Archer being duly proved in the proper register's office, took out letters testamentary upon the estate of the said testator, and by virtue thereof became possessed of all the personal estate and effects of the said testator at the time of his death, which it is alleged and believed were abundantly sufficient to pay all the debts and liabilities of the said testator; and if insufficient to pay all the debts and liabilities of the said testator, were abundantly sufficient to pay the amounts of the said several bonds and judgments as aforesaid, which by the acts of Congress, in such case made and provided, the said Eli K. Price and Charles Bispham, executors as aforesaid, were bound to pay in preference to all other creditors of the said testator.

And the said plaintiff avers that the whole of the principal sums with the arrears of interest, and the costs of the said several bonds and judgments as aforesaid, are still due and unpaid to the said United States, and that by law and equity the said United States are entitled to be paid the said several sums due to them out of the assets of the estate of the said Joseph Archer, deceased, in the possession of the said Eli K. Price and Charles Bispham, in preference to all other creditors, legatees, and devisees. And the said plaintiff charges that the said Eli K. Price and Charles Bispham have been selling and disposing of the estate and effects as aforesaid, in their possession, and thereby greatly diminishing and wasting the same to the great injury and loss of the said United States, and in derogation to their rights.

And the said plaintiff doth further shew, that on the 25th day of February, 1843, on petition of the said Charles Bispham to the orphan's court of the county of Philadelphia, he, the said Charles Bispham, was discharged from his office of executor and trustee as aforesaid.

But now, so it is, that the said Eli K. Price, executor as aforesaid, and Charles Bispham, combining, confederating, and contriving to wrong and injure the said United States in the premises, have refused, and still do refuse, to pay to the said United States the aforesaid several sums of money, although often called upon so to do.

In consideration thereof, and inasmuch as the said plaintiff can only have adequate relief in the premises in a court of equity, where matters of this kind are properly cognizable and relievable; to the end, therefore, that the said defendants, if they can show why the said plaintiffs should not have the relief hereby prayed, and may upon their several and respective corporal oaths, and according to the best of their several and respective knowledge, remembrance, information, and belief, full, true, direct, and perfect answer make, to such of the several interrogatories hereinafter numbered and set forth, as by the note hereunder written they are respectively required to answer, that is to say:

1. Whether the bonds aforesaid were not executed and delivered as aforesaid, and of the character and description as aforesaid.

2. Whether judgments at law were not obtained on the said bonds against the said defendants at the several dates, and for the several amounts, as before stated.

3. Whether the said judgments were not due and payable before the death of the said Joseph Archer.

4. Whether the said James L. Mifflin was not utterly insolvent and unable to pay and discharge his debts before the death of the said Joseph Archer.

5. Whether the said James L. Mifflin was not actually discharged as an insolvent debtor, by virtue of the insolvent laws of Pennsylvania, before the death of the said Joseph Archer, or under the acts of Congress in such cases provided.

6. Whether the said James L. Mifflin has not been discharged as a bankrupt, under the act of Congress establishing a uniform system of bankruptcy throughout the United States.

7. Whether the said Joseph Archer, either by himself, or his attorney in fact, did not assent to the release of the said Wm Foster from the said bonds and judgments aforesaid, without prejudice to his, the said Joseph Archers', liability to the said United States in the said several bonds and judgments.

8. Whether the said William Foster did not die, in the year 1840, utterly insolvent, and whether the said Joseph Archer did not survive him, and whether the said Joseph Archer did not die on the twenty fourth day of September, A. D. 1841.

9. Whether the said Eli K. Price and Charles Bispham did not take out letters testamentary on the estate of the said Joseph Archer, and exercise the office of executors as aforesaid, and when the said Charles Bispham was discharged from his said office.

10. What estate and effects passed by the said will and testament of the said Joseph Archer into the hands and possession of the said executors, and the value thereof.

11. Whether the said executors have not been selling and disposing of the estate and effects, and thereby diminishing and wasting the assets in their hands, in derogation of the rights of the said plaintiff.

12. Whether the bonds and judgments aforesaid, with the arrears of interest and costs, do not each and all remain unpaid and unsatisfied to the said plaintiffs.

And that an account may be taken by and under the direction and decree of this honorable court of what is due for the principal and interest, and costs of the several judgments as aforesaid, and that an account may also be taken of the personal estate and effects of the said testator, possessed or come into the hands of the said Eli K. Price and Charles Bispham, executors as aforesaid, and of the said Eli K. Price, executor of the said Joseph Archer, since the discharge of the said Charles Bispham as aforesaid. And that they shall be decreed to pay to the United States what shall appear to be due and owing to them for principal and interest, and costs of the said several bonds and judgments, out of the said testator's personal estate in a due course of administration; and in case the same shall be insufficient for the purpose, then out of the real estate of which the said testator died seized, to make good any such deficiency. And that the right of the said United States to a preference in payment out of the said assets, estate, and effects, and the proceeds thereof, may be decreed and established; and that the said United States may have further relief in the premises, as the nature of the case shall require, and as to this honorable court shall seem meet.

And the said plaintiff suggests unto your honors, that the premises considered, the court may grant a writ of subpœna, to be directed to the said Eli K. Price, executor of Joseph Archer, deceased, and the said Charles Bispham, if he shall come within the jurisdiction of the court, and their confederates when discovered, commanding them, and every of them, at a certain day, and under a certain pain, therein to be limited, to be and appear before this honorable court, and then and there to answer all and singular the premises, and to stand to, and abide and

perform such orders, directions, and decree as to this honorable court shall seem meet.

H. M. WATTS,
Attorney U. S.

Note.—The defendants, Eli K. Price, executor of Joseph Archer, deceased, and the said Charles Bispham, if he shall come within the jurisdiction of the court, are required to answer the interrogatories numbered respectively 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12.

The answer of Eli K. Price, executor of the last will and testament of Joseph Archer, deceased, to the bill of complaint of the United States of America.

This defendant, now and at all times hereafter, saving and reserving unto himself all benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties, and other imperfections in the said plaintiff's bill of complaint contained, for answer thereunto, or unto so much and such parts thereof as this defendant is advised is or are material or necessary for him to make answer unto, for answer unto the said

First interrogatory in plaintiff's bill, saith: That this defendant admits that the bonds stated and set forth in the said bill were executed and delivered by Joseph Archer in his lifetime, together with James L. Mifflin and William Foster in his lifetime, and said bonds are of the character and description as stated in said bill; and this defendant annexes copies of the said bonds, (marked A 1 to 3,) which he prays may be taken as a part of this answer. And this defendant avers, that the said bonds were executed and delivered to the plaintiffs by the obligors to secure the payment to the plaintiffs of the amounts specified in the respective conditions of the said bonds, being the amount of certain duties imposed by the plaintiffs according to law on divers goods and merchandise imported, and owned by the said James L. Mifflin, into the United States from foreign countries, in which bonds the said James L. Mifflin was the principal debtor, and the said Joseph Archer and Wm. Foster were sureties, according to the statute in such case made and provided.

And this defendant further answering to the second interrogatory in plaintiff's bill saith, that he admits that judgments at law were obtained on the said bonds jointly against the said James L. Mifflin, William Foster, and Joseph Archer, at the several dates and for the amounts as stated in the said bill. And this defendant avers, that after the rendition of the said judgments, to wit, on the twenty-second day of January, A. D. 1833, Louis McLane, Secretary of the Treasury of the United States, by his certain writing signed by him, and sealed with the seal of the Treasury of the United States, released the said William Foster from all debts then due by him to the said United States, and to which release is appended a certificate, dated fifteenth day of March, A. D. 1833, signed by H. D. Gilpin, then attorney of the United States; that the condition on which the said release was granted had been performed

by the said William Foster, copies of which release and certificate are appended to this answer, (marked B,) and which this defendant craves may be taken as part of this answer; and this defendant prays he may have leave to produce in court here said original release and certificate. And this defendant further avers, that after the rendition of the said judgments, to wit, on the sixth day of May, A. D. 1833, the said plaintiffs caused to be entered satisfaction of the said judgments respectively, of record in the district court for the United States for the eastern district of Pennsylvania, as to the said William Foster, as appears by the record of the said suits in which said judgments were obtained; a copy of which entry in each suit is hereto annexed, (marked C,) and which this defendant craves may be taken as part of this answer.

And this defendant further answering to the *third* interrogatory in plaintiff's bill saith, that he admits that the said judgments were due and payable before the death of the said Joseph Archer, to wit, on the rendition thereof.

And this defendant further answering unto the *fourth* interrogatory in the said plaintiff's bill saith, that he does not know, but has been informed, and believes, that the said James L. Mifflin was utterly insolvent and unable to pay and discharge his debts before the death of the said Joseph Archer, but when he became so insolvent this defendant is unable to answer, either from information, knowledge, or belief.

And this defendant further answering unto the *fifth* interrogatory in the said plaintiff's bill saith, that he does not know, but has been informed, and believes, that the said James L. Mifilin was discharged as an insolvent debtor by virtue of the insolvent laws of Pennsylvania, before the death of the said Joseph Archer, or under the act of Congress in such cases made and provided. But when, this defendant does not know.

And this defendant further answering unto the *sixth* interrogatory in the said plaintiff's bill saith, that he does not know, but has been informed, and believes, that the said James L. Mifflin was discharged as a bankrupt under the act of Congress, stated since the death of the said Joseph Archer.

And this defendant further answering unto the *seventh* interrogatory in the said plaintiff's bill saith, that he does not know whether the said Joseph Archer, either by himself or his attorney in fact, did or did not assent to the release of the said William Foster from the said bonds and judgments, as in the said bill stated, except by information derived from the said Joseph Archer in his lifetime, who, within the year next preceding his death, frequently assured this defendant that he had never known of, or consented to, any such release; and that he had never supposed authority therefor was contained or embraced in the power of attorney left by him with his said attorney, under which it has been suggested to the defendant the plaintiff may claim the assent of said Joseph Archer to have been given; and this defendant prays that the said power may be taken as part of this answer, (copy annexed, marked D). And this defendant implicitly believes in the truth of the said assurances so made to him by the said Joseph Archer.

And the said defendant further answering unto the *eighth* interrogatory in the said plaintiff's bill saith, that he does not know, but has been informed, and believes, that the said William Foster did die in the year 1840 utterly insolvent. The said Joseph Archer did survive him, and died on the 28th day of September, A. D. 1841.

And the said defendant further answering unto the said *ninth* interrogatory in the said plaintiff's bill saith, that he and Charles Bispham did take out letters testamentary to the estate of the said Joseph Archer in the county of Philadelphia, and State of Pennsylvania, and this defendant and the said Charles Bispham did execute the office of executor of the last will and testament of the said Joseph Archer, and the said Charles Bispham was, on the prayer of his own petition, in the orphan's court for the city and county of Philadelphia, on the 23d day of February, 1843, discharged from the office of executor aforesaid.

And the said defendant further answering to the *tenth* interrogatory in the said plaintiff's bill saith, that the estate and effects which were of the said Joseph Archer, deceased, which passed under his last will and testament into the hands and possession of this defendant, were greater in amount, and those which are now in his hands and possession are greater in amount, than the aggregate of the several sums claimed in said plaintiff's bill.

And the said defendant further answering unto the *eleventh* interrogatory in the said plaintiff's bill saith, that the said executors, and this defendant since he has been sole executor, have sold and disposed of part of the estate which was of the said Joseph Archer; but did not thereby diminish and waste the assets in their hands, nor were such sales in derogation of the rights of the plaintiffs. And this defendant further avers, that no part of the said estate has been lost or wasted to his knowledge and belief, and the attorney of the plaintiffs well knows that ample funds have been set aside agreeably to law to meet all the claims of the plaintiffs against the estate of said Joseph Archer, should such claims be established.

And this defendant further answering unto the *twelfth* interrogatory in the said plaintiff's bill saith, that he does not know, nor can he say, whether the bonds and judgments aforesaid, with the arrearages of interest and costs, each and all remain unpaid to the plaintiffs; in point of fact he avers, that partial payments thereof were made to plaintiffs, to wit, on the bond first in plaintiff's bill mentioned, on the sixteenth March, 1833, one hundred and twelve dollars and eighty-four cents; on the bond second therein mentioned, on same date, one thousand four hundred and sixty-three dollars and ninety-six cents; and on the bond last therein mentioned, on same date, two hundred and seventy-four dollars; and whether the said bonds and judgments are unsatisfied to or by the said plaintiffs, or released or discharged by the said plaintiffs, or by operation of law, this defendant cannot answer, but submits himself upon the facts in this his answer stated and set forth to the adjudication of this honorable court. And this defendant further answering saith, that the said plaintiffs, on the said judgment in plaintiff's bill stated, for the

sum of four thousand one hundred and eighty-eight dollars and sixty-two cents, to May sessions, 1829, No. 348, recovered on the sixteenth day of June, 1829, in the said district court, issued a writ of fieri facias against the defendants therein named, returnable to August sessions, 1829, of the said court, which writ is not returned of record in the said court; and the said plaintiffs, on the said judgment in plaintiff's bill stated, for the sum of one thousand nine hundred and fifty-five dollars, to May sessions, 1829, No. 360, recovered on the said day, in the same court, issued a writ of fieri facias against the said defendants, returnable August sessions, 1829, which writ is not returned of record in the said court. And the records of the said court in the premises this defendant craves leave to produce in court here, and he submits whether a presumption of payment of the said judgments does not arise.

And this defendant further avers, that the said plaintiffs, upon the judgment in the said bill stated, to November sessions, 1829, No. 19, recovered on the sixteenth day of November, 1829, in said court, for the sum of two thousand two hundred and ninety-seven dollars, have not since the rendition of the same issued or proceeded to execution against the said James L. Mifflin; and this defendant submits, that after so great delay and *laches* in respect of all said judgments, the plaintiffs can have no remedy in equity against him, this defendant, an executor of the said Joseph Archer, deceased, by reason of any thing set forth in the said plaintiff's bill; and if any remedy they have, it is at law upon the said judgments.

And this defendant submits to this honorable court, that all and every the matter in the said plaintiff's bill mentioned and complained of are matters which may be tried and determined at law, and with respect to which the said plaintiffs are not entitled to any relief from a court of equity; and this defendant prays that he may have the same benefit of this defence as if he had demurred to the said plaintiff's bill; and this defendant denies all and all manner of unlawful combination and confederacy wherewith he is by the said bill charged; without this, that there is any other matter or thing in the said plaintiff's bill of complaint contained, material or necessary for this defendant to make answer unto, and not herein and hereby sufficiently answered, confessed, traversed, and avoided or denied, is true to the knowledge and belief of this defendant; all which matters and things this defendant is ready and willing to aver, maintain, and prove, as this honorable court shall direct, and humbly prays to be hence dismissed, with his reasonable costs and charges in this behalf most wrongfully sustained.

J. MEREDITH,
JNO. MILES,
for Defendant.

Eli K. Price, the above defendant, being duly affirmed, doth depose and say, that the facts above set forth in the above answer, as of his own knowledge, are true; and so far as they are stated from the information of others, he believes them to be true. ELI K. PRICE.

Affirmed and subscribed before me this fourth day of October, A. D. 1843, in open district court, U. S.

FRAS. HOPKINSON,
Clerk of District Court.

No. 2217.

Know all men by these presents, that we, J. L. Mifflin, and J. Archer, and W. Foster, are held and firmly bound unto the United States of America, in the sum of fifty thousand dollars, to be paid to the said United States; for the payment whereof we bind ourselves, our heirs, executors, and administers, jointly and severally, firmly by these presents. Sealed with our seals, dated this 28th day of April, in the year of our Lord one thousand eight hundred and twenty-eight.

A. No. 1.—A. No. 1.

The condition of this obligation is such, that if the above bounden J. L. Mifflin, and J. Archer, and W. Foster, or either of them, or either of their heirs, executors, or administrators, shall and do, on or before the twenty-eighth day of April, 1829, well and truly pay, or cause to be paid, unto the collector of customs for the district of Philadelphia, for the time being, the sum of four thousand one hundred and eighty-eight dollars sixty-two cents, or the amount of the duties to be ascertained as due and arising on certain goods, wares, and merchandise, entered by the above bounden J. L. Mifflin and J. Archer, as imported in the ship Nassau, from Canton, as per entry dated this day, then the above obligation to be void, otherwise to remain in full force and virtue.

$4,188 62.

JAMES L. MIFFLIN, [L. S.]
WILLIAM FOSTER, [L. S.]
JOSEPH ARCHER. [L. S.]

Sealed and delivered in presence of—
D. GIBSON.

No. 2329.

Know all men by these presents, that we, J. L. Mifflin, J. Archer, and Wm. Foster, are held and firmly bound, unto the United States of America, in the sum of fifty thousand dollars, to be paid to the said United States; for the payment whereof we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals, dated this first day of May, in the year of our Lord one thousand eight hundred and twenty-eight.

A. No. 2.—A. No. 2.

The condition of this obligation is such, that if the above bounden J. L. Mifflin, J. Archer, and W. Foster, or either of them, or either of their heirs, executors, or administrators, shall and do, on or before the first day of May, 1829, well and truly pay, or cause to be paid, unto the collector of the customs for the district of Philadelphia for the

time being, the sum of nineteen hundred and fifty-five dollars, or the amount of the duties to be ascertained as due and arising on certain goods, wares, and merchandise, entered by the above bounden J. L. Mifflin, as imported in the ship Nassau, from Canton, as per entry, dated this day, then the above obligation to be void, otherwise to remain in full force and virtue.

$1,955. JAMES L. MIFFLIN, [L. S.]
JOSEPH ARCHER, [L. S.]
WILLIAM FOSTER. [L. S.]

Sealed and delivered in the presence of—

No. 1767.

Know all men by these presents, that we, J. L. Mifflin, Joseph Archer, and W. Foster, are held and firmly bound, unto the United States of America, in the sum of fifty thousand dollars, to be paid to the said United States; for the payment whereof we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals, dated this twelfth day of April, in the year of our Lord one thousand eight hundred and twenty-eight.

A. No. 3.—A. No. 3.

The condition of this obligation is such, that if the above bounden J. L. Mifflin, Jos. Archer, and W. Foster, or either of them, or either of their heirs, executors, or administrators, shall and do, on or before the twelfth day of October, 1829, well and truly pay, or cause to be paid, unto the collector of the customs for the district of Philadelphia for the time being, the sum of twenty-two hundred and ninety-seven dollars, or the amount of the duties to be ascertained as due and arising on certain goods, wares, and merchandise, entered by the above bounden James L. Mifflin, as imported in the ship Nassau, from Canton, as per entry dated this day, then the above obligation to be void, otherwise to remain in full force and virtue.

$2,297. JAMES L. MIFFLIN, [L. S.]
JOSEPH ARCHER, [L. S.]
WILLIAM FOSTER. [L. S.]

Sealed and delivered in the presence of—
D. GIBSON.

To all to whom these presents shall come, I, Louis McLane, Secretary of the Treasury of the United States, send greeting:

Whereas, William Foster, of Philadelphia, in the eastern district of Pennsylvania, has preferred his petition to the Secretary of the Treasury of the United States to be released from certain debts due by him to the United States on the first day of Jan., 1831, and a report in writing of the circumstances of the case having been transmitted to the said Secretary by the commissioners of insolvency for said district, pursuant to the provisions of the statute of the United States, passed the second day of March, 1831, entitled "an act for the relief of certain insolvent debtors of the United States."

B.—B.

And whereas, I, the said Secretary of the Treasury, having maturely considered the said petition and report, and it being proved to my satisfaction that the said William Foster was, on the first day of January, 1831, a debtor to the United States in a sum of money which he is unable to pay, that he hath done no act fraudulently to deprive the United States of their legal property, that he has not been guilty of any fraud, nor made any conveyance, real, or personal, in trust for himself, or with intent to defraud the United States, or whereby to expect any benefit or advantage to himself or family.

And whereas the said Joseph Archer, co-surety of the said William Foster, by his attorney, Samuel Archer, duly constituted, has filed with the Secretary of the Treasury his consent in writing, that the privileges of the said acts may be extended to the said William Foster without prejudice to his liability.

Now, therefore, know ye, that I, the said Secretary of the Treasury, in consideration of the premises, and by virtue of the power and authority vested in me by the aforesaid statute, and by an act of Congress, entitled "an act in addition to an act for the relief of certain insolvent debtors of the said United States," approved the fourteenth day of July, 1832, do hereby decide to release the said from the said debt, upon condition that the said Wm. Foster shall assign, transfer, and secure to the United States, in manner to be approved by the attorney of the United States for the eastern district of Pennsylvania, all and each of the debenture certificates he holds, or which may be held by him; and also six acres of cedar swamp to him appertaining and belonging, and situate in Burlington county, in the State of New Jersey.

Given under my hand and seal of office, at the city of Washington, this twenty-second day of January, in the year of our Lord one thousand eight hundred and thirty-three, and the fifty-seventh year of the independence of the United States.

LOUIS McLANE, [SEAL.]
Secretary of the Treasury.

I certify that William Foster has delivered up the debenture certificates held by and for him, and also has conveyed to Virgil Maxcy, Solicitor of the Treasury of the United States of America, his successors and assigns forever, in trust for the said United States of America, by indenture bearing date the twentieth day of February, 1833, and recorded in the clerk's office of the county of Burlington, at Mount Holly, in book D 3, of deeds, page 614, &c., all his interest, right, title, claim, and demand, in and to all the real estate in any wise to him appertaining, in Burlington county, in the State of New Jersey.

H. D. GILPIN,
Attorney of the U. S.

Philadelphia, 15th day of March, 1833.

C.

Copy of entry of satisfaction of record referred to in the foregoing answer in the several suits.

D. C. U. S. eastern district of Pennsylvania, to May S., 1829.

THE UNITED STATES OF AMERICA,
vs.
JAMES L. MIFFLIN, Wm. Foster, and Jos. Archer. } No. 348.

SAME
vs. } Ibid. No. 360.
SAME.

SAME
vs. } Ibid. To Nov. S, 1829. No. 19.
SAME.

1833, May 6. Costs paid. This judgment is satisfied as to the defendant William Foster, by virtue of a release granted by the Secretary of the Treasury, under the provisions of the acts for the relief of certain insolvent debtors of the United States, and in consideration of the performance, by the said Wm. Foster, of all the conditions made necessary by the said release as part of the terms on which it was granted, provided that this judgment is to remain unimpaired as to the other defendants, according to the provisions of the said acts and proceedings preliminary to said release.

D.

UNITED STATES OF AMERICA,
Commonwealth of Pennsylvania:

Know all men by these presents, that on the day of the date hereof, before me, Clement C. Biddle, esq., notary public for the Commonwealth of Pennsylvania, residing in the city of Philadelphia, by lawful authority duly commissioned and sworn, and by law authorized to receive proofs and acknowledgments of letters of attorney and procuration, and in presence of the subscribing witnesses, personally came and appeared Joseph Archer, of the city of Philadelphia, merchant, and declared to have known, ordained, nominated, constituted, and appointed, and by these presents doth make, ordain, nominate, constitute, and appoint, and in his place and stead put and depute his father, Samuel Archer, of the said city of Philadelphia, merchant, to be his true and lawful attorney, giving, and by these presents granting, unto his said attorney, full power and authority for the said constituent, in his name and behalf, and to his use, to ask, demand, and sue for, and by all lawful ways and means to recover and receive of and from all and every person and persons, bodies politic or corporate, or governments, whatsoever and wheresoever, all and every sum and sums of money, goods, and wares, merchandises, effects, debts, and demands whatsoever now is, or are, or shall, or may be, hereafter, due, owing, belonging to, detained from, or payable unto him, the said constituent, Joseph Archer,

whether by bond, note, bill, book account, consignments, or for or by what other ways or means, none excepted or reserved; and to that end to state, settle, and adjust all accounts in relation thereto, and to execute and deliver requisite and sufficient receipts, releases, acquittances, and discharges, and to do, transact, execute, and perform all matters and things of every kind relative to the individual concerns, business, and affairs of him, the said constituent; to enter and clear all vessels, goods, and effects, and transact all other custom house business; to sign, seal, and deliver all bonds for securing the payment of duties in relation to debentures as principal, or as surety, and all and every other description of bonds; to draw notes, checks, and bills, and to draw, endorse, accept, and negotiate all bills, notes, checks, orders, or other securities; also, if need be, to appear before all judges and justices in any court or courts of law or equity, or other competent tribunal or tribunals whatsoever, and wheresoever, and there to do, say, pursue, implead, arrest, attach, and prosecute, or to answer and defend as occasion shall or may require; and to compound, compromise, conclude, and agree for the same by arbitration or otherwise; and moreover, in and about the premises, to do, transact, execute, and perform all such other acts, matters, and things, as shall be deemed needful and most beneficial, in as full and complete a manner, to all intents and purposes, as the said constituent might or could do if personally present; also, with power of substitution and revocation, hereby ratifying and confirming all and whatsoever his said attorney shall or may lawfully do by virtue of these presents.

In witness whereof the said constituent hath hereunto set his hand and seal; done and passed at Philadelphia aforesaid, the seventeenth day of September, in the year of our Lord one thousand eight hundred and thirty.

JOSEPH ARCHER.

Sealed and delivered in presence of us—
LEWIS WILD,
CLEMENT C. BIDDLE.

In premissorum fidem—
CLEMENT C. BIDDLE, *Notary public*.

Rendered September 24, 1832.

I, George Smith, recorder of deeds, &c., for the city and county of Philadelphia, do certify, that the above and foregoing is a true copy of a certain instrument of writing remaining of record in my office, in letter of attorney book A. M., No. 1, page 163, &c.

Witness my hand and seal of office this second day of August, 1841.

For GEORGE SMITH,
JOSHUA SPERING.

The replication of Henry M. Watts, attorney of the United States for the district aforesaid, to the answer of Eli K. Price, executor as aforesaid, defendant.

This repliant, saving and reserving unto these United States all and all manner of advantage of exception to the manifold insufficiencies of

the said answer, for the replication thereto saith, that he will aver and prove the said bill to be true and sufficient in law to be answered unto, and that the said answer of the said defendant is uncertain and untrue, and insufficient to be replied unto by this repliant; without this, that any other matter or thing whatsoever in the said answer contained, material or effectual in the law to be replied unto, confessed and avoided, traversed or denied, is true; all which matters and things this repliant is, and will be, ready to aver and prove as this honorable court shall direct. And humbly prays, as in and by the said bill, on behalf of the said United States, he hath already prayed.

H. M. WATTS,
Attorney U. S., E. D. Pa.

Afterwards, to wit, on the 23d day of October, 1846, the following agreement is filed, to wit:

It is agreed that the replication to the defendant's answer filed by the complainants be withdrawn, and that this case be set down for hearing upon bill and answer, and the exhibits attached thereto.

T. M. PETTIT, *for U. S.*,
JNO. MILES,
MEREDITH,
Solicitors for respondent.

Afterwards, to wit, on the twenty-seventh day of October, A. D. 1846, this case came on to be heard upon the bill, answer, and the exhibits attached to the answer filed, and the counsel for the complainants and respondent were fully heard.

Whereupon it is ordered and decreed that the complainants' bill be dismissed, and that the defendant is dismissed.

Afterwards, to wit, on the fourth day of December, A. D. 1846, an agreement in the words and figures following is filed, to wit:

October Session, 1843.—*No.* 3.

THE UNITED STATES OF AMERICA,
vs.
ELI K. PRICE, executor of the last will and testament of Joseph Archer, deceased. } In equity.

It is hereby agreed, that the answer of the defendant in the above cause be amended by attaching the annexed paper or certificate from the collector's office, custom house, Philadelphia, (marked A, No. 4.) and the annexed copy of the original entry of importation by James L. Mifflin, (marked A, No. 5,) to the said answer as a part thereof, and as exhibits in the said cause, to have the same effect as if they had formed a part of the said answer when originally filed.

T. M. PETTIT,
Attorney of the U. S.

November 30, 1846.

JNO. MILES,
W. M. MEREDITH,
Of counsel for defendant.

A, No. 4.

CUSTOM HOUSE, PHILADELPHIA, *Collector's office*.

I certify, that James L. Mifflin is the principal, and William Foster and Joseph Archer are the sureties on bond No. 2217, (now in suit,) taken for duties accruing on merchandise imported into this district in the ship Nassau, and entered by the said James L. Mifflin, April 28th, 1828. Conditioned for the payment of—dollars, 4188 $\frac{62}{100}$, on the 28th April, 1829.

Witness my hand and seal of office, this twenty-third day of Novem-
[L. S.] ber, 1846. CHARLES TREICHEL, *Dep. col.*

A, No. 5.

Entry of merchandise imported by J. L. Mifflin in the ship Nassau, whereof Hewitt is master, from Canton on the 12th day of April, 1828, which teas have been stored for the benefit of long credit, and are now entered for delivery.

Marks.	Number.	Packages and Contents.		
M	8	Twenty-five chests Y. Hyson.		
	15	Seventeen " "		
	18	Three " "		
	11	Thirty half " "		
	17	Ten " "		
	5	Thirty " " (Ex'd 30 chests Hyson tea, 16th May, 1828—1885.)		
	1	Forty twenty-five Catty boxes Pouchong.		
	2	One chest Young Hyson.		
	3	One " " "		
	7	One " " "		
	9	One " " "		
	10	One " " "		
	13	One " " "		
	14	One " " "		
	19	One " Hyson Skin.		
	20	One " " "		
[M]		Five 5 Catty boxes G. Powder tea. (Ex'd. See over.)		
	19	Doll. 34	a 50 p. c.	17 00
	20	" 9,636	40	3,854 40
	20	" 124	28	34 72
		" 1,130	25	282 50
		Philadelphia, 28th April, 1828		$4,188 62

60—Signed, JAMES L. MIFFLIN.